

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Criminal No. 18-04 (DWF/LIB)

Plaintiff,

v.

**ORDER DECLINING TO ADOPT
REPORT AND RECOMMENDATION**

Leo Wayne Cook,

Defendant.

This matter is before the Court upon the United States of America's ("Plaintiff") objections (Doc. No. 79) to Magistrate Judge Leo I. Brisbois's June 19, 2018 Report and Recommendation (Doc. No. 72) insofar as it recommends that Defendant's First Motion to Suppress Search of Defendant's Vehicle be granted. Defendant Leo Wayne Cook filed a response to Plaintiff's objection and motion for a *de novo* hearing on August 16, 2018. (Doc. No. 83.)

Although the Court is not required to hold a *de novo* evidentiary hearing, such a hearing will put it in the best position to evaluate the Government's argument. *See United States v. Raddatz*, 447 U.S. 667, 681 n.7 (1980) (assuming without deciding that a district court would not reject a magistrate's credibility findings *where those findings are dispositive* without conducting a *de novo* evidentiary hearing). Specifically, the Government challenges Magistrate Judge Brisbois's credibility findings regarding Minnesota State Patrol Trooper Brad Dingman's testimony concerning the stop of Defendant's vehicle. Defendant acknowledges that the credibility findings were central

to Magistrate Judge Brisbois's analysis. (*See, e.g.*, Doc. No. 83 at 7-8.) Because the credibility findings are outcome determinative, the Court will hold a *de novo* evidentiary hearing on Defendant's suppression motion.

The Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Plaintiff United States of America's objections (Doc. No. [79]) to Magistrate Judge Leo I. Brisbois's June 19, 2018 Report and Recommendation are **GRANTED** insofar as they request a *de novo* evidentiary hearing on Defendant Leo Wayne Cook's First Motion to Suppress Search of Defendant's Vehicle (Doc. No. [41]).

2. The Court **DECLINES TO ADOPT** Magistrate Judge Leo I. Bisbois's June 19, 2018 Report and Recommendation (Doc. No. [72]).

3. The Court will conduct a *de novo* evidentiary hearing on Defendant Leo Wayne Cook's First Motion to Suppress Search of Defendant's Vehicle (Doc. No. [41]).

Dated: August 22, 2018

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge